

**Area-Wide Soil Contamination Task Force – Meeting 12**  
**June 16, 2003, SeaTac, WA**

**Meeting Summary**

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The Area-Wide Soil Contamination Task Force met for the twelfth time on June 16, 2003 in SeaTac. This meeting focused on finalizing the draft Task Force report and recommendations, discussing the Agencies' next steps for implementing the Task Force recommendations, and thanking participants for their work on the Area-Wide Soil Contamination Project.

**Application of the Model Toxics Control Act**

Elizabeth McManus of Ross & Associates reviewed the draft text developed by the Model Toxics Control Act (MTCA) subgroup that describes the Task Force's objectives for an alternative approach to MTCA for area-wide soil contamination, the possible elements of such an approach, and a set of recommendations to the Agencies about MTCA. These recommendations consist of the following:

- As much as possible, use regulations instead of policies to implement Task Force recommendations on implementation of MTCA.
- Avoid listing individual properties affected by area-wide soil contamination and instead identify and describe area-wide soil contamination zones.
- Establish in regulation a new enforcement forbearance policy available where property owners choose to implement Task Force recommendations at residential and commercial properties within area-wide soil contamination zones. To complement the policy, establish a standard checklist that can be used to document property status. Announce the new policy and checklist when area-wide soil contamination zones are first described.
- Where property owners choose not to implement Task Force recommendations, they remain under the current MTCA system that includes an Ecology policy under which, in general, the agency chooses not to take enforcement actions at residential properties.
- Where properties are sampled and concentrations of arsenic and lead are below cleanup levels, provide a streamlined process to reflect that properties are clean.
- The traditional MTCA approach remains available to property owners who want to use it to address area-wide soil contamination and to Ecology where a property is affected by contamination other than area-wide soil contamination.

Task Force members discussed the draft MTCA text, particularly the recommendations addressing enforcement forbearance and the process for determining area-wide soil contamination zones as an alternative to individual property listings. A few Task Force members expressed concerns about the designations of zones and about how they might be interpreted by judges if challenged in court. Other Task Force members argued that the zones would provide benefits to property owners through an alternative to the traditional MTCA process. Task Force members also observed that it will be a continuing challenge to explain the meaning and benefits of area-wide soil contamination zones to the public.

Task Force members also discussed existing enforcement forbearance policies and their application to commercial properties. Ecology's current enforcement forbearance policies apply

to commercial properties only under certain circumstances (e.g., ground water contamination). Task Force members discussed that the new enforcement forbearance approach recommended where property owners implement Task Force recommendations at residential and commercial properties within area-wide soil contamination zones would cover commercial properties. Because the Task Force recommendations for commercial property are based upon practices commonly associated with commercial development (e.g., maintaining good soil cover with buildings, pavement, or other means), it is likely that most commercial properties will be covered by the new enforcement forbearance approach. This will be clarified in the Task Force Report.

Finally, Task Force members agreed that the text describing the preference for use of regulations instead of policies to implement recommendations related to implementation of MTCA should be revised to describe the benefits of regulations (e.g., certainty, predictability) and eliminate use of the word “bias.”

### **Executive Summary of the Task Force Report**

The Task Force reviewed the draft executive summary of the Task Force report and proposed several changes to it, including the following:

- Add a description of the Task Force recommendations for commercial properties.
- State that information is not available on the extent of roadside lead contamination in Washington.
- Explain that the Task Force focused on children (one of the guiding principles) because they are particularly susceptible to health risks from arsenic and lead.
- Use the terms “total” and “milligrams per kilogram” (mg/kg) rather than the less precise term “parts per million” when describing concentrations.
- Note that the education and awareness building recommended by the Task Force is public health education, to make the purpose of the education effort clearer to the reader, as suggested by the Department of Health.

### **Other Revisions to the Task Force Report**

The Task Force also discussed proposed substantive changes to the report text describing lead concentrations found in root vegetables, health risks, and mapping recommendations. In particular, Task Force members debated the degree to which scientific studies show whether or not there are health effects from exposure to low to moderate levels of arsenic and lead in soil. Task Force members decided on several changes to the report, including the following:

- Clarify the description of the levels of lead found in a shipment of Washington root crops based on comments by Frank Peryea.
- Revise the description of studies of health effects to read as follows: “Scientific studies to date have not found conclusive evidence that exposure to low-to-moderate levels of arsenic and lead contamination in soil has caused or is causing deleterious health effects in Washington residents. The number of pertinent studies is small, and their designs lack sufficient power to detect the presence of increased incidences of adverse health effects, if any do exist. Health monitoring and research studies have not been carried out to the extent necessary to understand and document whether exposure to low- to moderate-level soil contamination is causing or contributing to long-term health problems.”

- Add text addressing Task Force member Jim Hazen's concern about the value of further investment in updating and developing maps and view that funds would be better used to offset the cost of soil testing for property owners.

### **Implementation of the Task Force Recommendations**

The chartering agencies discussed their plans with respect to implementing Task Force recommendations. Ecology Deputy Director Linda Hoffman reported that the Agencies will jointly produce an implementation plan and schedule in September that will be shared with Task Force members. Dr. Jude Van Buren of the Department of Health also informed the Task Force that the Department lost funding from the Centers for Disease Control for blood testing for the 2003-05 biennium.

Some Task Force members offered to help reach out to their constituencies to explain and advocate for the Task Force recommendations and asked that a presentation be developed that staff and Task Force members could use. A few Task Force members also encouraged the Agencies to use private sector resources to help implement the Task Force recommendations, where possible, to reduce overall implementation costs.

### **Thanking Participants of the Area-Wide Soil Contamination Project**

The Agencies thanked each Task Force member individually for their service and gave each member a certificate of appreciation from the Governor's Office. Most Task Force members signed the Task Force report at this time.

### **Public Comments**

There was one opportunity for public comment provided during the meeting, during which the following comments were made.

- Bonnie Meyer of Public Health – Seattle & King County suggested that the Task Force's individual property evaluation flowchart be amended so that there would be another option if individuals "don't know" whether a property is within a smelter emission plume.
- Karen Pickett of Asarco said that Asarco does not have the money to pay for implementation of the Task Force recommendations and that outreach regarding area-wide soil contamination should include the message that individuals will need to pay for responses to contamination. She requested that the Task Force report mention other sources of arsenic and lead more often and noted that exposure to area-wide soil contamination will not change the cancer rate in the State even if the risk level upon which the cleanup standards are based is accepted. Furthermore, she said that although she appreciates the Task Force's recommendations for enforcement forbearance, she has concerns about how it will be received by local neighborhoods.
- Warren Hansen of Onsite Enterprises thanked the Task Force for its work and suggested that the Task Force should include industrial properties in its report and noted his concern that leaving it out would penalize industrial properties. He said that the source of the airborne contamination was the same whether residential, commercial, or industrial properties are affected, and that there are many properties zoned as industrial within the Tacoma smelter plume. Furthermore, he noted that it should not be assumed that industrial

properties are dirty properties and that there are efforts ongoing to clean up industrial brownfields where they occur in the Duwamish River basin.

- Greg Glass, an independent consultant, noted that there were exposure pathway studies completed by an interagency air work-group during 1983-85 that considered the health effects from air-borne pollutants from western Washington smelters. He said that the Agencies might consider the differences in the variability of contamination between areas affected by smelter emissions and areas affected by lead arsenate pesticide application. Furthermore, he observed that the Task Force report section on root vegetables does not reflect the history of efforts to protect home gardeners from potential uptake of lead and arsenic in leafy vegetables and other home-grown produce within smelter emission plumes.

## **Next Steps**

- The project team will contact Task Force members who missed the Task Force meeting to discuss the meeting's outcomes, gather signatures for the final report, and distribute meeting materials.
- The project team will revise the draft Task Force report based on the Task Force discussion as noted above, and based on any editorial changes sent to the project team by Thursday, June 19, 2003. The report will also be carefully proofread before it is finalized. All Task Force members will receive a copy of the final report and a CD with electronic copies of the report and the report appendices.
- The Agencies will provide Task Force members with an update about the implementation of the Task Force recommendations around September 2003.

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## **Meeting Materials**

- Agenda
- Summary of the 6/2/03 Task Force meeting
- List of major changes to the Task Force report since the 6/2/03 Task Force meeting
- Draft Area-Wide Soil Contamination Task Force report dated 6/16/03
- Revised draft of the MTCA section of the Task Force report, with suggestions from Craig Trueblood incorporated
- Revised draft of the health risks section of the Task Force report, with suggestions from Frank Peryea incorporated
- Revised draft of the root vegetables section of the Task Force report, with suggestions from Frank Peryea incorporated
- Revised maps of area-wide soil contamination
- Appendices for the Task Force report:
  - o Appendix A: Glossary of Terms and Uses
  - o Appendix B: Task Force Process Documents
  - o Appendix C: Summary of Focus Group and Public Comments on the Task Force Preliminary Recommendations
  - o Appendix D: Summary of Interviews with Task Force Members and Stakeholders
  - o Appendix E: Summary of the Information Survey
  - o Appendix F: Institutional Frameworks Case Studies and Institutional Approaches Used in Other States
  - o Appendix G: Supporting Research on Institutional Systems in Washington
  - o Appendix H: Information on Health Effects from Exposure to Arsenic and Lead

- Appendix I: Examples of Local Maps of Area-Wide Soil Contamination
- Appendix J: Evaluation of Protection Measures
- Appendix K: Area-Wide Soil Contamination Toolbox
- Appendix L: NWFPFA Interim Recommendations for Managing Potential Risk of Lead Arsenate Uptake from Former Orchard Sites and Related Documents
- Appendix M: Cost Estimates for the Task Force Recommendations
- Appendix N: Summary of Potential Funding Sources
- Appendix O: Summary of Task Force Recommendations

#### Members in Attendance

Katherine Bridwell, Safeco  
 Loren Dunn, Riddell Williams for Washington Environmental Council  
 Steve Gerritson, Sierra Club  
 Jim Hazen, Washington State Horticultural Association  
 Linda Hoffman, Washington State Department of Ecology  
 Steve Kelley, Washington Association of Realtors  
 Scott McKinnie, Far West Agribusiness Association  
 Laura Mrachek, Cascade Analytical  
 Ray Paolella, City of Yakima  
 Frank Peryea, Washington State University Tree Fruit Research and Extension Center  
 Randy Phillips, Chelan-Douglas Health District  
 Paul Roberts, City of Everett  
 Craig Trueblood, Preston Gates & Ellis  
 Jude Van Buren, Washington State Department of Health  
 Mike Wearne, Washington Mutual Bank  
 Ann Wick, Washington State Department of Agriculture

#### Members Unable to Attend

Jon DeJong, Wenatchee School District  
 Ted Gage, Washington State Department of Community, Trade and Economic Development  
 Steve Marek, Tacoma-Pierce County Health Department  
 Marcia Riggers, Washington State Office of the Superintendent of Public Instruction  
 Ken Stanton, Douglas County Board of Commissioners

#### Consultant Support

Kris Hendrickson, Landau Associates  
 Anne Dettelbach, Ross & Associates Environmental Consulting  
 Elizabeth McManus, Ross & Associates Environmental Consulting  
 Bill Ross, Ross & Associates Environmental Consulting  
 Jennifer Tice, Ross & Associates Environmental Consulting

#### Agency Staff and Ex Officio Alternates

Washington State Department of Ecology:

Dave Bradley  
 Dawn Hooper  
 Jim Pendowski  
 Rick Roeder

Washington State Office of the Attorney General, Ecology Division:

Steve Thiele

Washington State Department of Health:

Jim White